



NATIONAL MEDIATION BOARD

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Re: NMB Case No. R-6993
Cape Air/Nantucket

Gentlemen and Ms. Price:

This determination addresses the April 6, 2004 appeal filed by Hyannis Air Services, Inc. d/b/a Cape Air/Nantucket Airlines (Cape Air or Carrier) of Investigator Susanna C. Fisher's eligibility rulings. For the reasons discussed below, Cape Air's appeal is denied.

I.

Procedural Background

On February 20, 2004, the International Brotherhood of Teamsters (IBT or Organization) filed an application pursuant to the Railway Labor Act (RLA)*, 45 U.S.C. § 152, Ninth (Section 2, Ninth) seeking to represent the craft or class of Pilots of Cape Air. On March 4, 2004, the Carrier provided the National Mediation Board (Board) with a List of Potential Eligible Voters (List). The Board authorized a Telephone Electronic Voting (TEV) election on March 8, 2004. On March 9, 2004, the Investigator sent a letter to the Carrier and the IBT setting a schedule for the challenges and objections and the election period. On March 19, 2004, the IBT filed its challenges and objections to the List. The Carrier responded on March 26, 2004. On April 1, 2004, the Investigator ruled on all challenges. The Carrier appealed the ruling on April 6, 2004. The IBT responded to the appeal on April 9, 2004.

The TEV instructions were mailed out on April 2, 2004. The tally is scheduled to take place on April 23, 2004.

II.

Investigator's Ruling

The IBT asserted that Edward C. Kelley should be removed from the List since he suffered a heart attack in early 2002 and has not been able to return to his pilot's position. Therefore, the IBT argued that Mr. Kelley does not have a reasonable expectation of returning to work in the Pilot craft or class. Moreover, the IBT argued that due to his present position in the Flight Training Department, Mr. Kelley no longer works as a pilot. For these reasons, the IBT concluded, Mr. Kelley is not eligible to vote.

* 45 U.S.C. § 151, *et seq.*

The Carrier challenged both of these objections, arguing both that Mr. Kelley has a reasonable expectation of returning to his pilot's position, and that his work in the Flight Training Department qualifies him to participate as a member of the pilot craft or class.

Citing the Board's Representation Manual (Manual), Section 9.205, the Investigator found that Mr. Kelley is not working in the Pilot craft or class and, therefore, is not eligible to vote in the upcoming election. In relevant part, Manual Section 9.205 states, "Employees working in another craft or class, working for the carrier in an official capacity, or working for another carrier are ineligible."

Cape Air's Appeal

On April 6, 2004, the Carrier appealed the Investigator's ruling that Edward Kelley is not eligible. The Carrier asserted that Mr. Kelley "is on authorized medical leave, and is not working for the Carrier outside the craft or class." Furthermore, the Carrier argues that Mr. Kelley has a reasonable expectation of returning to work as a pilot and, therefore, should be ruled eligible. In support of its contention, the Carrier relies on the affidavit of W. Scott LaForge, Executive Vice President, Cape Air, which states:

He [Mr. Kelley] possesses a Third-Class Medical Certificate and is working to re-apply for a First-Class Medical Certificate which is required to serve as a pilot. He wishes and intends to return to work as a pilot and is expected to do so. Since Mr. Kelley presently holds a Third-Class Medical Certificate, he is working temporarily in the Carrier's Flight Training Department which consists of Mr. Kelley and approximately 15 line pilots who also serve as training pilots.

IBT's Response

In its response, the IBT argued that Mr. Kelley does not have a reasonable expectation of returning to work as a pilot, and furthermore, that his work in the Carrier's Flight Training Department makes him ineligible to vote in the Pilot craft or class. In support of its position, the IBT relies on the affidavit of Walter S. Kyle, Pilot, Cape Air, which states:

[Mr. Kelley] suffered a heart attack in early 2002 and has since been unable to reacquire his First Class FAA medical certificate which is required to fly scheduled revenue flights. Mr. Kelley has not bid a schedule nor flown a revenue flight for the carrier since that time and there is no indication he will ever be able to resume flying with the carrier. Mr. Kelley now works exclusively in the Flight Training Department where he gives check rides, line checks and teaches ground school.

Discussion

The Investigator ruled that Mr. Kelley is no longer working in the Pilot craft or class. The Carrier objects to this ruling and argues that "the flight training function – which is performed exclusively by the line pilots – must be considered as part of the pilot craft or class." The Carrier also reasserts its earlier argument that Mr. Kelley should be included in the Pilot craft or class because he has a reasonable expectation of returning to work as a Pilot.

The Carrier argues that Mr. Kelley is not working in another craft or class and relies on the Board's decisions in *Comair, Inc.*, 22 NMB 175 (1995), and *American Airlines, Inc.*, 19 NMB 113 (1991) to support its assertions. However, both of these cases argue against the Carrier's proposition. In *Comair, above*, the Board found that Flight Attendant Instructors and Check Airmen are included in the Flight Attendant craft or class. The Board based its decision on the fact that Flight Attendant Instructors and Check Airmen fly revenue flights

when they are not performing their instructor or check functions and typically rotate into and out of these positions from Flight Attendant positions. Furthermore, the Board stated that all Flight Attendant Instructors and Check Airmen are required to meet the same qualifications as Flight Attendants. In *American Airlines, above*, the Board found that Check Airmen perform the functions of regular line pilots and, therefore, are part of the Pilot craft or class.

In contrast, Mr. Kelley does not perform work as a line pilot. Mr. Kelley has not bid or flown a revenue flight in two years, nor is he medically certified to do so. Therefore, Mr. Kelley is not working in the Pilot craft or class. Pursuant to Manual Section 9.205, Mr. Kelley is not eligible to vote.

Conclusion

The evidence fails to establish that Mr. Kelley is working in the Pilot craft or class. Therefore, based on the discussion above, the Board upholds Investigator Fisher's ruling and finds Edward C. Kelley is not eligible to vote.

By direction of the NATIONAL MEDIATION BOARD.



Mary L. Johnson
General Counsel